UNITED NATIONS **E**

Economic and Social Council

Distr.
GENERAL

E/C.12/2001/SR.49
30 August 2001

Original: ENGLISH

COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Twenty-sixth (extraordinary) session

SUMMARY RECORD OF THE 49th MEETING

Held at the Palais Wilson, Geneva,
on Friday, 24 August 2001, at 3 p.m.

Chairperson: Ms. BONOAN-DANDAN
(Chairperson)

later: Mr. CEAUSU
(Vice-Chairperson)

later: Ms. BONOAN-DANDAN
(Chairperson)

CONTENTS

CONSIDERATION OF REPORTS:

(a) REPORTS SUBMITTED BY STATES PARTIES IN ACCORDANCE WITH ARTICLES 16 AND 17 OF THE COVENANT (continued)

Fourth periodic report of Germany (continued)

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Official Records Editing Section, room E.4108, Palais des Nations, Geneva.

Any corrections to the records of the meetings of the Committee at this session will be consolidated in a single corrigendum to be issued shortly after the end of the session.

GE.01-44392 (E) 280801 300801

The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS:

(a) REPORTS SUBMITTED BY STATES PARTIES IN ACCORDANCE WITH ARTICLES 16 AND 17 OF THE COVENANT (agenda item 6) (continued)

Fourth periodic report of Germany (continued) (E/C.12/1/Add.29 and E/C.12/4/Add.3; E/C.12/CA/GER/1; E/C.12/Q/GER/2; HR/CESCE/NONE/2001/5)

1. At the invitation of the Chairperson, Ms. Augstein, Mr. Haberland, Ms. Kuck-Schneemelcher, Mr. Lewalter, Mr. Willers and Ms. Wittling-Vogel (Germany) resumed their places at the Committee table.

Articles 6-9 of the Covenant

2. Mr. TEXIER, beginning on a positive point, noted the long dialogue which the German Government had had with other treaty monitoring bodies and the International Labour Organization (ILO) on the integration of civil servants, the decisions thereon in 1997 by the German Constitutional Court and the European Court of Human Rights, and the conclusions of the ILO Committee of Experts on the Application of Conventions and Recommendations for the year 2000, according to which those decisions were consistent with the need for proportionality laid down by the ILO Committee of Inquiry as well as with annex I of the Unification Treaty.

3. Regarding flexibility in the labour market, he asked whether that had led to more part-time and fixed-term contracts with fewer guarantees against dismissal.

4. Concerning the employment of prisoners, he enquired whether work by such persons contracted out to private firms continued to be solely on a voluntary basis.

5. Regarding article 7, he noted that according to paragraph 77 of Germany's fourth periodic report (E/C.12/4/Add.3), equality of pay rates between civil servants in the new Länder and the old Länder had still not been attained. Could the delegation comment on that problem?

6. Turning to article 8, he said that he disagreed entirely with the explanations given by the delegation on the right to strike. Admittedly, matters would become simpler once the Committee produced a general comment defining what restrictions could be placed on that right, but he was certain that it would not greatly depart from the position of ILO, which had on a number of occasions made clear its disagreement with the German Government on the right to strike in the civil service. He had been struck by the delegation's reference that morning to the right of judges to strike. In France, that right had been achieved. On a number of occasions judges who were members of one particular trade union had gone on strike, yet no one had had to face sanctions. In his view, civil servants who were teachers or who had been assigned to a privatized company should have the right to strike. For civil servants in many European countries the right to strike was much broader, although there was still a requirement to provide minimum service, for example in the case of striking doctors or nurses in hospitals.

7. Concerning collective bargaining, when civil servants wanted higher pay, they negotiated with the State. There again, he had the impression that the German position was somewhat behind the times. For ILO, restrictions on the right to strike were confined to civil servants active in ensuring the public order, namely prison guards, police and the members of the armed forces, and certainly did not apply to the entire civil service.

8. On the question of equal pay for women, he gathered that legislation was planned on that issue. Did unequal pay start at the beginning of a woman's career? Did the disparity grow more pronounced during her career? Did many more women than men have part-time employment? What were current trends? How was the German Government coping with that problem?

9. Mr. MARTYNOV drew attention to the widening gap in unemployment between the eastern and western Länder. The Bundestag President himself had expressed concern at the level of unemployment in eastern Germany. According to the country report, half of government expenditure in that regard went to the eastern Länder. If, despite the enormous investments and numerous programmes to promote jobs the situation continued to deteriorate, either the programmes were inadequate, the money invested was insufficient or there were other reasons to explain the phenomenon. Could the delegation give reasons for that growing disparity?

10. Regarding article 7, he referred to the question of wage parity between the old and new Länder. Did Germany envisage full wage equality for civil servants in eastern and western Germany at any time in the future? According to other reports, the target date for equalizing pensions was 2030, which was very far off.

11. On article 9, he said that according to the Committee's information, there was a great lack of day-care facilities, especially in western Germany, thereby making it difficult for families to have two wage earners and adversely affecting their standard of living. Were there any plans to create more day-care centres?

12. Germany was currently undertaking a pension reform. The new pension scheme would be based on full working careers. He asked whether it was true that persons whose career had been interrupted because of unemployment, child-rearing and the like would not be eligible for a full pension when they reached retirement age.

13. Mr. CEAUSU also cited existing wage disparities and asked whether the cost of living in eastern Germany was lower than in western Germany. Was there a tendency for young people to leave eastern Germany in search of better-paying jobs in western Germany?

14. With regard to trade union rights, he referred to the table provided as part of the reply to issue 22 and asked whether there had been any sociological studies to explain the decline in trade union membership. Was it due to the level of union dues? Was collective bargaining open only to trade union members, or could independent workers also take part?

15. What percentage of an employee's salary was accounted for by social security contributions?

16. Mr. AHMED asked whether foreign workers and asylum-seekers were entitled to unemployment benefits or any other assistance if they were not yet legally established in the country.

17. It seemed a contradiction to say that skilled immigrants were needed when there were some 500,000 unemployed foreigners already living in Germany. Could the delegation comment?

18. He wondered whether it was really true that 80 per cent of the persons who had been civil servants in the former German Democratic Republic had not been re-employed and did not have adequate compensation or a pension plan. If so, what did they live on?

19. Mr. WILLERS (Germany), referring first to a question by Mr. Texier on flexibility in the labour market, said that during the discussion of Germany's third periodic report his delegation had pointed out that some legal measures had not been successful and that the new Government intended to reverse a number of provisions which had relaxed protection against dismissal. That had since been done. But there had to be some flexibility in the labour market. Any Government which took labour-market measures found itself on the horns of a dilemma. It must protect employees, but must also take account of the need for market forces to be able to respond quickly and flexibly to rapidly changing economic developments.

20. Concerning part-time employment, he said that in fact the demand for part-time jobs was greater than the supply: the problem was not too many part-time jobs, but too few.

21. Clear guidelines existed governing fixed-term employment; it was not the case that such contracts could be concluded without any form of oversight. Furthermore, fixed-term employment enabled persons to show that they already had on-the-job experience when they applied for a permanent post later on. Thus such contracts were beneficial to employers and employees alike.

22. On the question of work by prisoners, he noted that the most recent report on Germany of the ILO Committee of Experts had not made any comment on the use of prison labour by private firms.

23. Turning to the questions asked by Mr. Martynov, he acknowledged that unemployment in the new Länder continued to be higher than in the old Länder despite the many measures taken. But unemployment among the young was not as big a problem in Germany as in other countries, owing to the national programme of classes in vocational schools and simultaneous on-site training.

24. High unemployment in the new Länder was a worrisome phenomenon. Job measures were continuously monitored for their effectiveness and were amended where necessary.

25. Regarding pension reform, he said that that development was too recent to have been discussed in the documents, but it would be included in the next report. Of course, there was nothing new about a pension reflecting a person's occupational career. That had always been the basis of the German pension system. Periods of vocational training, unemployment and

child-rearing, during which employees made no contributions to their pension funds, were added together and treated as though some contributions had in fact been made. The new development in pension funds made every employee responsible for taking out supplementary insurance to help further offset periods in which he or she earned less or nothing at all.

26. Although the standard of living was still slightly lower in the eastern Länder than in the western Länder, the gap was fast closing. Many apartments in large towns in the eastern Länder were left empty, but not because their tenants had migrated to western Germany. There was a tendency in the eastern Länder to move out to the suburbs, which offered a better quality of life.

27. By international standards membership levels in German trade unions were fairly high and he did not believe that they depended on the amount of dues paid. For several decades union dues had remained static and were willingly paid by union members to be used for strike funds.

28. Regarding social security contributions, 9.65 per cent of an employee's salary was deducted in pension contributions, between 6.8 and 6.9 per cent for health insurance, and 5 per cent for unemployment benefit; there was also a deduction for long-term care insurance.

29 Mr. Ceausu (Vice-Chairperson) took the Chair.

30. Mr. HABERLAND (Germany) said that although civil servants were not covered by collective bargaining agreements, they had strong unions which were able to exert pressure on the Government to increase wages. The salaries of civil servants in the eastern Länder had been increased to 90 per cent of levels in the western Länder. Berlin was an exception - salaries there had been fully aligned. It was an ongoing process and there would be further negotiations to harmonize wages throughout the country. It was difficult to predict when parity would be achieved, possibly by 2030.

31. Migration of the population to the suburbs in the eastern Länder was explained in part by a desire to leave the inner city; tax incentives were available for the purchase of suburban property. Employment prospects were also better.

32. Despite the fairly high unemployment rate, including among foreign residents, there was still a shortage of manpower with specialized skills, hence the Federal Government's initiative to bring information technology experts into the country through facilitated entry procedures. A foreign worker who had been resident in Germany for some time and subsequently became unemployed was eligible for unemployment benefit according to the number of years' contributions paid. Thereafter he would receive social security benefits funded by taxpayers. Unemployed asylum-seekers were entitled to social security benefits. People from the former German Democratic Republic who lost their jobs were also eligible for benefits - the relevant contributions being paid by the State. Many others qualified for early retirement schemes.

33. Ms. WITTLING-VOGEL (Germany) said that prisoners were not allowed to choose whether they wished to work for private companies under government supervision.

34. Ms. AUGSTEIN (Germany) said that there was an acute shortage of child-care facilities in the western Länder. For historical reasons the situation in the eastern Länder was far better. In addition to trying to increase the number of kindergarten, the Federal Government was introducing other measures, including greater flexibility in taking parental leave; more opportunities for part-time work; and selecting mothers for State-run training programmes as nannies. Germany did not have a tradition of day-care centres, but efforts to encourage their establishment in the different Länder were under way. Moreover, in close cooperation with industry, the Federal Government had drawn up a series of guidelines on how to reconcile family and career covering flexible working hours, sabbaticals, telecommuting, job-sharing, sharing responsibility for childcare, a more family-friendly working environment and company crèches. One major hurdle was that childcare facilities were the responsibility of the Länder, not the Federal Government. The latter was, nevertheless, striving to improve the situation in order to promote equal opportunities in employment.

35. In theory, complaints relating to equal pay for equal work could be brought before the courts. In practice, however, women had tended to work in lower paid, less demanding jobs as they had been viewed by employers and perhaps had also regarded themselves as largely responsible for raising their children; hence their preference for part-time work or even for interrupting their careers for a number of years. According to Federal statistics the gap between men's and women's wages was now closing as women were increasingly better qualified and taking less maternity leave. In that connection, she drew attention to a Federal Government paternity leave initiative, which was proving fairly successful.

36. Ms. Bonoan-Dandan resumed the Chair.

37. Mr. LEWALTER (Germany), in reply to Mr. Martynov's comments about the persistently high unemployment rate in the new Länder despite special measures taken by the Federal Government, recalled that traditionally the former German Democratic Republic had had a higher unemployment rate and lower productivity rate than West Germany. Following reunification excess manpower had had to be reduced and efforts had been focused on reinvestment with the aim of increasing productivity. Economic restructuring was not confined to the eastern Länder: the unemployment rate in some western Länder, such as coal-mining areas in the Saar Valley was as high as 30 per cent. Nevertheless the situation in the eastern Länder undoubtedly required greater efforts by the State in order to guarantee the full enjoyment of economic, social and cultural rights.

38. Mr. GRISSA asked what retraining programmes were available for the unemployed to adapt them to the new requirements of the job market, for instance as a result of the shift from heavy to service industries. He also sought information on the pension situation of the highly skilled foreign workers currently being recruited in Germany, especially in the field of information technology.

39. Mr. TEXIER, commenting further on the question of equal pay for equal work, said that in accordance with a European Court of Human Rights decision, it was no longer the responsibility of the complainant to prove that there had been discrimination; instead, the

employer now had to prove the contrary. France was currently amending its legislation along those lines. He requested the State party to provide information in its next periodic report on case law relating to wage differences for reasons of gender or otherwise.

40. Mr. WILLERS (Germany) said that the recruitment of highly skilled workers from abroad was only one aspect of Federal Government efforts to compensate for the shortage of information technology specialists. Thousands of new training centres had been established to provide programmes in information technology for the unemployed; private companies were also encouraged to train staff in that field and the number of students in higher education in information technology-related disciplines was increasing.

41. Unemployed Germans seemed reluctant to work in the tertiary sector, possibly owing to irregular working hours. So despite Federal Government efforts to encourage local recruitment the numbers of foreigners in, for example, the catering and service industries remained high. A person recruited from abroad was entitled to draw a pension in Germany upon reaching the appropriate age. A number of pension fund agreements had already been reached with foreign countries to ensure compatibility in that respect.

Articles 10-15 of the Covenant

42. Ms. BARAHONA-RIERA, referring to article 10, asked whether there was any legislation providing protection for foreign women who claimed to be the victims of trafficking or prostitution. Some other European Union countries facilitated residency procedures for such women. According to the written replies, cooperation agreements had been concluded with foreign prosecution services in the target countries of sex tourism. However, was it possible to try sex tourism offences in Germany and, if so, what procedures were there for handling complaints and evidence?

43. With regard to article 11, she expressed concern about the overall reduction in Germany's official development assistance, and asked whether it would have an effect on the percentage of resources Germany had earmarked in recent years for rural development projects, particularly those targeted at women.

44. Mr. ATANGANA requested further clarification of measures taken with regard to domestic violence. It appeared that the police were responsible for expelling perpetrators of domestic violence from their homes. Presumably, such expulsions were temporary, as a permanent expulsion would constitute the break-up of a family. He asked what provisions were made for childcare, noting that child poverty and social exclusion were among the main causes of child exploitation. Finally, he asked what procedures were in place to ensure social assistance to young victims of domestic violence.

45. Mr. MARTYNOV welcomed the information provided on unemployment, but expressed concern at the increasing gap between unemployment rates in the eastern and western parts of the country. With regard to conditions in nursing homes in Germany, he said that a German

non-governmental organization had reported 85 per cent malnutrition and 36 per cent dehydration among the 400,000 people living in nursing homes. Because of staff shortages, patients were heavily sedated. Patients often suffered from open wounds, and mortality rates were high. He asked the Government to pay urgent attention to those problems and to provide information on them in its next report.

46. Mr. HUNT, referring to article 13, on the right to education, asked whether the State party had resisted the temptation to introduce fees for tertiary education. Following on from the discussion on non-discrimination and equal treatment, under articles 2 and 3 respectively, he asked for additional information on the number of women in the highest levels of academia and whether women faced barriers in their academic careers. Finally, he asked about class sizes and quality of education.

47. Mr. WIMER ZAMBRANO said that tertiary education appeared to be going through a period of change. He requested views on the role of the modern university in the new Germany, not only in terms of funding but also in regard to overall orientation.

48. Mr. SADI said that family violence, especially violence against women and children, seemed to be on the increase in Germany despite various measures to counteract it. He asked whether divorce and family breakdown might be causal factors and noted that no information had been provided on the results of the Government's programmes. With regard to sex tourism, he asked for feedback on the results of activities under bilateral agreements, and whether Germany exercised extraterritorial jurisdiction over German nationals who committed crimes against children abroad. Finally, he asked whether the rise in homosexual unions in Europe conformed with the concept of protection of the family.

49. Mr. GRISSA, referring to the right to health, cited the case of a pharmaceutical company facing legal action for loss of life through use of one of its drugs. He asked whether the production and marketing of drugs was adequately controlled, and whether there was sufficient testing before drugs were released onto the market.

50. Mr. RATTRAY asked about poverty in the context of article 11, concerning the right to an adequate standard of living. Despite the conceptual and methodological difficulties mentioned in paragraph 160 of the report (E/C.12/4/Add.3), it was surely a matter of concern that some millions of people in Germany would be categorized as poor under any definition. It was necessary to establish a poverty threshold in order to provide reports in fulfilment of obligations under article 11. The Committee was trying to find out how many people in the society did not enjoy an adequate standard of living. He asked for a clearer picture, with numbers, in the next report.

51. With regard to health, and in particular HIV/AIDS, many felt that human rights superseded intellectual property rights when it came to making drugs available at affordable cost to enable HIV-infected people to survive. He asked whether the Government considered the

human rights obligations under the Covenant as having sufficient weight to subordinate the intellectual property rights of pharmaceutical companies in the case of drugs to combat HIV/AIDS.

52. Mr. LEWALTER (Germany), referring to the question by Mr. Hunt on article 13, concerning the right to education, said that the Government was still considering the matter of fees for tertiary education. Post war, such fees had always existed but at very low levels. The question currently being discussed was whether to move towards a system of centres of excellence, which would entail higher costs and necessitate higher contributions. Private institutions of that type already existed, and it remained to be seen whether centres of excellence would be created in the State sector. Fees accounted for 2 per cent of the cost to students of a university education. Students also needed money to cover living expenses and books. In addition to scholarships, there was a State system of subsidies, available only to poor students. Should fees rise, presumably State subsidies would be increased accordingly.

53. He could not provide figures on the number of women at the highest academic level, but said that it was likely that a woman in a fast-paced field such as physics would have to choose between a career and a family because it was difficult to catch up academically after an absence.

54. With regard to class size, he drew attention to differences in teaching methods. In such countries as the United Kingdom and the United States, universities favoured a tutorial system and teaching tended to take place in small groups. In other countries, including Germany, teaching generally took the form of lectures, and it made no difference whether the audience contained 2 or 200 students. Obviously, an overall increase of 7 per cent in the number of students at the tertiary level would call for changes in the teaching system and that question was currently being debated.

55. The quality of education was good, and students tended to go abroad because of a lack of places. In some cases students might go abroad because they preferred a tutorial system. Study abroad also increased the opportunity for employment in international organizations.

56. With regard to the question by Mr. Grissa concerning drug safety, he said that a widely-used drug had been withdrawn from the market by the company concerned because use of the drug had been linked with several hundred deaths. The proportion of deaths among those taking the drug was low but represented an unacceptable risk. The drug had first been put on the market in the United Kingdom, via a subsidiary, subject to United Kingdom requirements. Side effects had been notified and immediately followed up on, and the drug had been withdrawn. Control mechanisms were generally adequate, but in some instances they failed.

57. The question raised by Mr. Rattray concerning access to HIV/AIDS drugs and the balance between human rights and intellectual property rights was being debated within the United Nations system. The World Health Assembly, the governing body of the World Health Organization (WHO), had adopted two resolutions on the subject in 2001. His Government recognized both the right to human health and intellectual property rights. Having discussed the

question of HIV/AIDS drugs in WHO, it had become clear that administering the drugs posed a problem for several African States. Indeed, the cost of administering the drugs was probably higher than the cost of the drugs themselves. The World Trade Organization (WTO) Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) allowed States to take action to produce or buy drugs at lower cost in certain emergencies. There was thus an escape clause, which his Government supported.

58. Ms. WITTLING-VOGEL (Germany), responding to the question on homosexual unions, said that a law had come into force on 1 August 2001 according homosexual partners a similar legal status to heterosexual married couples, with for example, the same rights and obligations relating to inheritance.

59. Concerning extraterritorial jurisdiction, German citizens could be tried abroad under certain circumstances, but there were no specific legal provisions relating to sex tourism.

60. Ms. AUGSTEIN (Germany), responding to the question on high-level career opportunities for female academics, said that, while some 10 per cent of female academics had the requisite qualifications, only about 5 per cent held professorships. A range of measures had been taken on behalf of women, as described in the report. In 2000 State funding to support women in academic life had amounted to 12 million deutsche marks. Specific programmes aimed to improve career and training opportunities. There had been an increase in the number of women in temporary employment, and many women chose jobs with limited career prospects. One programme aimed to improve opportunities for women in the field of information technology. Another programme, funded by the Federal Government and the Länder in the amount of 60 million deutsche marks, aimed to increase the proportion of women holding university professorships.

61. With regard to human trafficking and the sexual exploitation of children, she drew attention to the written replies and, in particular, to the increased penalties for such crimes. The law prohibited possession of child pornography, defined as pornography involving minors. Under the Penal Code, German citizens who exploited children abroad could be prosecuted abroad if their actions were considered a crime in the country concerned. The Government had signed and was preparing to ratify the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography.

62. A national follow-up conference on child exploitation, which had elicited much interest, had been held in March 2001; numerous NGOs had been represented and had been instrumental in its preparation. One outcome was the national plan of action for child protection, on which the authorities were currently engaged.

63. Witnesses, including those to sexual crimes, were protected under the law. The use of video technology afforded children psychological protection, enabling them to be questioned in camera rather than in public. The Ministry of Justice had issued guidelines for the treatment of child witnesses.

64. Replying to Mr. Atangana's question on domestic violence, she said that in most Länder police could impose on an offender a 48-hour restraining order, extendable to 10 days. Restraining orders issued by the courts covered periods of six months to one year. The investigating officers ensured that there was no immediate further danger to the victim, secured the evidence, and questioned the parties. The woman usually took possession of the house, but an Austrian survey had shown that men in such cases rarely became homeless. While she could neither confirm nor deny that such violence was on the increase, it seemed likely that there was increased reporting rather than a higher incidence. The causes of domestic violence were myriad. They were psychological for the most part and linked to women's feelings of liberation. The Austrian survey had shown that the male partner, sensing his leadership role decline, reacted with violence, often in the context of a separation or divorce. She acknowledged that the police needed training in the type of intervention appropriate to those circumstances.

65. Regarding child poverty, the Federal Government's recent National Report on Wealth and Poverty revealed that 56 per cent of child beneficiaries of financial aid lived in normal households. The risk was highest in single-parent households, especially those headed by women. The Federal Government adopted a dual approach: effective family policy, coupled with measures to end the income disparity between families with children and those without. Family-friendly workplaces were encouraged in order to prevent parents who could not afford childcare from leaving the labour force and becoming dependent on welfare.

66. Following a ruling by the Federal Constitutional Court, the Government was abolishing the injustice inherent in the rules governing taxation, and benefits such as paternity and child-rearing leave were available. She referred the Committee to the Federal Government's National Report on Wealth and Poverty.

67. Mr. WILLERS (Germany) acknowledged that the situation regarding State-run nursing homes was critical. Their quality was poor, and many, instead of providing active nursing care, resorted to passive treatment in the form of sedation, with a resulting high incidence of incontinence, malnutrition and dehydration. A new act governing nursing-home standards would take effect on 1 January 2002, rendering the defects more easily detectable and remediable. Care services would be improved and a system of surprise inspections and independent quality control would be put into operation. Increased consumer protection would be provided, including automatic reimbursements.

68. Ms. KUCK-SCHNEEMELCHER (Germany) said that living standards were governed by a series of laws and that the aim of social welfare was to enhance human dignity. In addition to basic allowances for food, home maintenance, rent and heating, there were one-time benefits for clothing, utensils and similar items.

69. On the question of the poverty line, she referred members to the Federal Government's National Report on Wealth and Poverty. The 1984 report of the Council of Ministers of the European Community had defined the poor as persons whose resources were so limited as to exclude them from the minimum acceptable way of life.